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FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6585

DATE COMPLAINT FILED: 05/31/12

DATE OF NOTIFICATION: 06/07/12 and
08/15/12

DATE ACTIVATED: 07/17/12

EXPIRATION OF SOL: 04/30/15-04/30/17

COMPLAINANT:

Campaign Legal Center

RESPONDENTS:

Edolphus Towns

Gwendolyn Towns

Committee to Re-Elect Ed Towns and Albert C.
Wiltshire in his official capacity as treasurer

RELEVANT STATUTES:

2 U.S.C. § 439(a)

INTERNAL REPORTS CHECKED:

FEC Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint in this matter alleges that Representative Edolphus Towns converted campaign funds to personal use in violation of provisions of the Federal Election Campaign Act of 1971, as amended (the "Act").¹ The allegation is based on news reports and on reports filed with the Commission indicating that Representative Towns's wife Gwendolyn Towns uses a campaign-financed vehicle for non-campaign activities. As set forth in detail below, we recommend that the Commission find reason to believe that Representative Towns, Gwendolyn Towns, and the Committee to Re-Elect Towns and Albert C. Wiltshire in his

¹ Towns has served as U.S. Representative for the Tenth Congressional District of New York since 1983.

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official capacity as treasurer (the "Committee") violated 2 U.S.C. § 439a, and approve an investigation to determine the amount in violation.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The Complaint alleges that Representative Towns, through his principal campaign committee, the Committee to Re-Elect Ed Towns, has converted campaign funds to personal use based on news accounts that Gwendolyn Towns uses a campaign-financed vehicle for non-campaign activities, including driving to and from her place of employment. Compl. ¶ 2. In relevant part, an *Inside Edition* article cited in the complaint states:

While we were looking for Congressman Town's car, we also noticed his wife driving another luxury vehicle, an Infiniti, with congressional tags. She was observed day after day - driving to the carwash, the dry cleaners and back and forth to work at a local hospital. But Towns doesn't pay for that car either. We found records showing the \$602 lease on the Infiniti is paid for with the congressman's campaign funds. Experts say that is an apparent violation of campaign finance rules.

Inside Edition Investigates Congressional Cars, INSIDE EDITION (May 1, 2012),

<http://www.insideedition.com/news/8119/inside-edition-investigates-congressional-cars.aspx>;

see also Alison Gendar, *Congressman Ed Towns' Wife Given Tools Around Brooklyn in Car*

Paid for by Hubby's Campaign, N.Y. DAILY NEWS (May 1, 2012), [http://www.nydailynews.com/new-york/brooklyn/congressman-ed-towns-wife-gwen-tools-brooklyn-car-paid-hubby-](http://www.nydailynews.com/new-york/brooklyn/congressman-ed-towns-wife-gwen-tools-brooklyn-car-paid-hubby-campaign-article-1.1070862)

[campaign-article-1.1070862](http://www.nydailynews.com/new-york/brooklyn/congressman-ed-towns-wife-gwen-tools-brooklyn-car-paid-hubby-campaign-article-1.1070862). The Complaint notes that the Committee's disclosure reports

reflect monthly automobile lease payments of \$602.43 for at least 12 months, but do not

reflect that Towns or his wife reimbursed the campaign for any personal use of the vehicle.

Compl. ¶¶ 7-8.

1 The Respondents maintain that the Complaint's allegation that the campaign-financed
2 vehicle at issue was used solely for personal use is baseless and inaccurate.² Committee Resp.
3 at 3; Gwendolyn Towns Resp. at 2. They admit that the vehicle at issue is used for personal
4 activities in addition to campaign activities. *Id.* They assert, however, that the personal use
5 of the vehicle is paid for by Towns and his wife through the vehicle expenses they pay out of
6 their personal funds. Committee Resp. at 3; Gwendolyn Towns Resp. at 3.

7 The Respondents explain that during the height of the 2010 election, Representative
8 Towns and his wife executed a three-year lease for a 2010 Infiniti G37 automobile that they
9 intended to use for mixed campaign and personal purposes. Committee Resp. at 1;
10 Gwendolyn Towns Resp. at 1. According to Respondents, the monthly payment on the lease
11 is \$602.33, and the Committee paid this expense monthly, totaling \$14,316.34 as of the date
12 of the Complaint, which covers approximately two years of the three-year lease. Committee
13 Resp. at 1, 3 n.3; Gwendolyn Towns Resp. at 1, 3 n.3. Respondents maintain that additional
14 monthly expenses for insurance and fuel totaling approximately \$250 to \$300 are paid by
15 Representative Towns or his wife from their personal funds to cover the apportioned cost of
16 the vehicle for the amount of time he and his wife used it for personal purposes. Committee
17 Resp. at 1; Gwendolyn Towns Resp. at 1. Respondents note that insurance on the vehicle is
18 approximately \$175 per month and that the cost of premium fuel varies widely. Committee
19 Resp. at 2 n.1; Gwendolyn Towns Response at 1 n.1. Based on these figures, the
20 Respondents state that the total cost of operating the leased vehicle at issue is between

² The Office of Complaints and Legal Administration ("CELA") notified Towns and the Committee of the Complaint on June 7, 2012. The Committee submitted a response on June 26, 2012. After considering the Committee's response, CELA notified Gwendolyn Towns of the Complaint. Gwendolyn Towns submitted a response on August 30, 2012. Subsequently, Representative Towns submitted a designation of the same counsel that represents the Committee and Gwendolyn Towns. Counsel for Representative Towns confirmed via e-mail that the previously submitted responses of the Committee and Gwendolyn Towns likewise functions as Representative Towns's response to the complaint in this matter.

1 approximately \$850 and \$900 per month on average, and, of that amount, the campaign pays
2 approximately \$600 and Representative Towns pays \$250 to \$300 per month. Committee
3 Resp. at 3; Gwendolyn Towns Resp. at 3.

4 The Respondents maintain that "the vehicle is primarily located and used in Brooklyn
5 by Gwendolyn Towns, the Congressman, and campaign staffers." Committee Resp. at 2;
6 Gwendolyn Towns Resp. at 1. According to the Respondents, Gwendolyn Towns frequently
7 uses the vehicle to participate in campaign or officeholder events in Brooklyn, including
8 monthly meetings of the Women's Caucus, Concerned Women of Brooklyn, IMC Auxiliary,
9 the Men's Caucus, the ARTC Board of Directors, the board of the Bedford YMCA, the Unity
10 Democratic Club, and various neighborhood and block association meetings. Committee
11 Resp. at 2; Gwendolyn Towns Resp. at 1-2. The Respondents state that Gwendolyn Towns
12 also uses the vehicle to travel to Albany for the Black and Puerto Rican Caucus meetings and
13 the vehicle has been driven to Washington, DC on several occasions to participate in events.
14 Committee Resp. at 2; Gwendolyn Towns Resp. at 2.

15 According to the Respondents, in April 2012, Representative Towns announced that
16 he would not seek re-election for a sixteenth term, and the Committee is in the process of
17 winding down. Committee Resp. at 1; Gwendolyn Towns Resp. at 1. Respondents assert that
18 as the Committee engages in the process of winding down and the use of the vehicle shifts
19 from heavy campaign use to increased personal use, Representative Towns fully intends to
20 reimburse the Committee in a manner that is proportionate to the use of the vehicle, and
21 ultimately will take over the lease payments entirely. Committee Resp. at 3; Gwendolyn
22 Towns Resp. at 3. Respondents maintain that Representative Towns's calendar entries, bills,
23 and receipts provide a sufficient record to determine the proportion of the vehicle expenses

1 attributable to campaign uses relative to personal activities, although Respondents do not
2 attach these records to their response. Committee Resp. at 3 n.4; Gwendolyn Towns Resp. at
3 3 n.4.³

4 **B. Legal Analysis**

5 Under the Act and Commission regulations, a candidate and the candidate's
6 committee have wide discretion in making expenditures to influence the candidate's election,
7 but may not convert a contribution or donation described in 2 U.S.C. § 439a(a) to the personal
8 use of the candidate or any other person. 2 U.S.C. § 439a(b)(1); 11 C.F.R. § 113.1(g). A
9 contribution or donation is considered personal use if it is used for a noncampaign-related
10 automobile expense. 2 U.S.C. § 439a(b)(2)(C).

11 Commission regulations provide guidance regarding what would be considered
12 personal use of campaign funds. Personal use is defined as "any use of funds in a campaign
13 account of a present or former candidate to fulfill a commitment, obligation or expense of any
14 person that would exist irrespective of the candidate's campaign or duties as a Federal
15 officeholder." 11 C.F.R. § 113.1(g).

16 Commission regulations list a number of purposes that constitute personal use *per se*.
17 11 C.F.R. § 113.1(g)(1)(i). Where a specific use is not listed as personal use, the Commission
18 makes a determination on a case-by-case basis whether an expense would fall within the
19 regulation's definition of personal use. 11 C.F.R. § 113.1(g)(1)(ii). The regulations
20 specifically identify types of expenses that are subject to a case-by-case analysis, including
21 non-*de minimis* vehicle expenses. *Id.* Under that provision, if a committee uses campaign
22 funds to pay expenses associated with a vehicle that is used for both personal activities

³ Disclosure reports reflect that in addition to the leased vehicle at issue, the Committee made monthly payments for an earlier leased vehicle from June 2007 to June 2010. The Complaint contains no allegation and we have no information indicating that there has been a violation of the Act with respect to that vehicle.

1 beyond a *de minimis* amount and campaign or officeholder related activities, “the portion of
2 the vehicle expenses associated with the personal activities is personal use,” unless the
3 campaign account is reimbursed within 30 days for the expenses associated with the personal
4 activities. *Id.* For uses of campaign funds that are both personal use and campaign or
5 officeholder use, “a contemporaneous log or other record must be kept to document the dates
6 and expenses related to the personal use” and this log or record must be updated with each
7 personal use. 11 C.F.R. § 113.1(g)(8).

8 Here, the Respondents admit that the vehicle at issue is used in part for personal
9 activities. *See* Committee Resp. at 3; Gwendolyn Towns Resp. at 2. Significantly, although
10 the Respondents state that “[their] personal uses of the vehicle are only a fraction of the
11 overall use of the vehicle,” Committee Resp. at 3; Gwendolyn Towns Resp. at 3, they do not
12 identify what fraction of that use was personal, nor do they claim that the amount of personal
13 use was *de minimis*.

14 Absent a basis for the Commission to conclude that the personal use of the vehicle
15 amounted to a *de minimis* use, the Commission’s regulations require “the person(s) using the
16 vehicle for personal activities [to] reimburse the campaign account within thirty days for the
17 expenses associated with the personal activities.” 11 C.F.R. § 113.1(g)(1)(ii)(D). Otherwise,
18 the portion of the vehicle’s expenses associated with personal activity is deemed personal use.

19 The Respondents claim that Representative Towns and Gwendolyn Towns covered the
20 costs associated with their personal use of the vehicle by paying for related vehicle expenses
21 such as insurance and gasoline from personal funds. Even if true, this method of apportioning
22 costs would not comply with the requirements of the law, which requires reimbursement of
23 “the campaign account within 30 days.” *Id.* It further avoids disclosure of the

1 reimbursements in the disclosure reports of the Committee, and thus impermissibly removes
2 that activity from the public record.

3 In addition, review of the Committee's disclosure reports reveals that, between August
4 2010 and May 2011, the Committee made at least \$717.09 in payments the purpose of which
5 is described as "gas" or to Representative Towns for "Reimbursement gas and tolls" or
6 "reimbursement for gas, meeting." See 2010 October Quarterly Report at 32, 46-47; 2010
7 Pre-General Report at 21; 2011 July Quarterly Report at 79. Consequently, and contrary to
8 the Respondents' assertion, Representative Towns and Gwendolyn Towns may not in fact
9 have paid all monthly expenses for fuel from their personal funds to cover the portion of the
10 leased vehicle that was used for personal activities.

11 Because Representative Towns and Gwendolyn Towns did not reimburse the
12 Committee for their personal use of the vehicle in accordance with the regulations concerning
13 personal use and vehicle expenses, we recommend that the Commission find reason to believe
14 that Representative Towns, Gwendolyn Towns, and the Committee violated 2 U.S.C. § 439a.⁴

15 III. PROPOSED INVESTIGATION

16 We recommend that the Commission authorize a limited investigation to ascertain
17 the total amount of time and expenses related to the personal use of the leased vehicle at
18 issue. Pursuant to 11 C.F.R. § 113.1(g)(8), the Respondents were required to keep a
19 contemporaneous log or other record to document dates and expenses related to the

⁴ We note that the Commission has concluded that payment arrangements proposed in past advisory opinions involving mixed use of leased or purchased vehicles are permissible under the Act and Commission regulations. The arrangements, however, involved *de minimis* personal use, or reimbursing the Committee's account within 30 days for the portion of vehicle expenses associated with personal activities that are beyond *de minimis*. See Advisory Op. 2001-03 (Meeks) (Commission permitted the purchase of a vehicle with campaign funds where personal use of the vehicle would be *de minimis*); see also Advisory Op. 1992-12 (LaRocco) and Advisory Op. 1984-59 (Russo) (Commission permitted the purchase of a vehicle with campaign funds where the candidate proposed to reimburse the Committee for personal use of the vehicle).

1 personal use of campaign funds. Respondents maintain that Representative Towns's
2 calendar entries, bills, and receipts provide a sufficient record to determine the proportion
3 of the vehicle expenses attributable to campaign uses versus personal activities.
4 Committee Resp. at 3 n.4; Gwendolyn Towns Resp. at 3 n.4. Although we will attempt to
5 conduct the investigation informally, formal discovery may be necessary. We therefore
6 recommend authorizing the use of compulsory process, including interrogatories and
7 subpoenas, as necessary.

8 IV. RECOMMENDATIONS

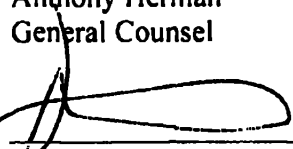
- 9 1. Find reason to believe that Edolphus Towns violated 2 U.S.C. § 439a.
- 10 2. Find reason to believe that Gwendolyn Towns violated 2 U.S.C. § 439a.
- 11 3. Find reason to believe that the Committee to Re-Elect Ed Towns and Albert C.
12 Wiltshire in his capacity as treasurer violated 2 U.S.C. § 439a.
- 13 4. Approve the attached Factual and Legal Analysis;
- 14 5. Authorize the use of compulsory process, including interrogatories and subpoenas,
15 as necessary;
- 16 6. Approve the appropriate letters.

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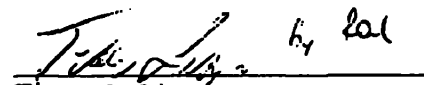
10/11/12

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MUR 6585 (Edolphus Towns)
First General Counsel's Report

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